

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BENJAMIN SMOLINSKI,

Defendant.

**8:16CR226**

**ORDER**

This matter is before the Court on defendant Benjamin Smolinski's ("Smolinski") Statement of Objection to Magistrate Judge's Order (Filing No. 95) denying Smolinski's Motion to Review Detention (Filing No. 79). Smolinski challenges the magistrate judge's<sup>1</sup> denial of his request "for release on pretrial supervision to participate in residential chemical dependency treatment." The government has not responded to the objection. Upon careful review of the record, the Court finds Smolinski's objection should be overruled. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Crim. P. 59(a).

After his arrest on serious drug charges, Smolinski was ordered detained because he presented a risk of nonappearance for trial and a posed a risk to the safety of the community (Filing No. 23). On September 12, 2016, Smolinski filed a Motion to Direct Pretrial Services to Investigate Placement for Substance Abuse Residential Treatment (Filing No. 56). The magistrate judge denied the Motion because Smolinski had "twice before participated in residential treatment" and had "a record of assaultive behaviors and ha[d] displayed a lack of respect for court orders."

To his credit, Smolinski, as he puts it, "took the initiative . . . to seek out a residential treatment program and has been evaluated by and accepted at the Omaha Campus for Hope." On November 2, 2016, Smolinski filed a Motion to Review

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<sup>1</sup>The Honorable Thomas D. Thalken, United States Magistrate Judge for the District of Nebraska.

Detention (Filing No. 79), requesting “an order directing [his] release on pretrial supervision with the condition that he participates in residential chemical dependency treatment at the Omaha Campus for Hope.” On November 3, 2016, Smolinski pled guilty to conspiracy to distribute and possess with intent to distribute a mixture or substance containing methamphetamine.

On November 15, 2016, the magistrate judge denied Smolinski’s Motion, noting that Smolinski pled guilty in this case and had his Nebraska state probation for Operating a Motor Vehicle to Avoid Arrest revoked. The magistrate judge found “Smolinski has a history of running or hiding from law enforcement and has a history of noncompliance and prior treatment failures.” The magistrate judge noted “[t]he evaluation submitted with his motion reflected that Smolinski is ‘treatment-wise and seems to say what he thinks others want to hear.’”

Smolinski objects to the magistrate judge’s reliance on that statement and the denial of his Motion. Smolinski emphasizes the statement must be placed in context as a prediction about potential barriers to recovery within a strong recommendation that Smolinski receive treatment. Noting “[p]ost-arrest rehabilitation is a factor that is considered at sentencing,” Smolinski argues he “should be allowed to avail himself of such rehabilitative efforts.”

As a general matter, the Court agrees that substance-abuse treatment is invaluable to the individual struggling with substance abuse and to society as a whole. But that is not the only consideration here. Smolinski has an extensive criminal history and faces a prison sentence of five to forty years. Even without Smolinski’s prior treatment failures, the Court must balance the potential benefits of treatment against the risks of releasing Smolinski from detention pending sentencing. The Court finds no error in the magistrate judge’s conclusion that “Smolinski remains a flight risk and a danger to the community, and his placement at Omaha Campus for Hope does not diminish those risks.”

Accordingly, Smolinski's Statement of Objection to Magistrate Judge's Order (Filing No. 95) is OVERRULED.

IT IS SO ORDERED.

Dated this 9th day of December, 2016.

BY THE COURT:

*s/ Robert F. Rossiter, Jr.*  
United States District Judge